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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,332	11/16/2000	Karen Ann Sheppard	10236	4336

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[REDACTED] EXAMINER

AHMED, SHEEBA

ART UNIT	PAPER NUMBER
1773	9

DATE MAILED: 03/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application N .	Applicant(s)
	09/714,332	SHEPPARD ET AL.
	Examiner	Art Unit
	Sheeba Ahmed	1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1)  Responsive to communication(s) filed on 12 December 2002.

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4)  Claim(s) 14-44 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 14-44 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ . 6)  Other: \_\_\_\_\_ .

## **DETAILED ACTION**

### ***Response to Amendment***

1. Claims 1-13 have been cancelled in the above-identified application. New claims 14-44 have been added. **Claims 14-44 are now pending.**

### ***Terminal Disclaimer***

2. The terminal disclaimer filed on December 12, 2002 (Paper No. 7) disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of US 6,074,762 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Objections***

3. Claim 26 is objected to because of the following informalities:  
The term "polybutylene terephthalate" is incorrectly spelled. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 14-25, and 27-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Cretekos et al. (US 6,074,762).

Cretekos et al. disclose a multilayer film having a core layer, a block resistant layer (***corresponding to the heat sealable layer of the claimed invention***) which inhibits blocking to a functional layer of the film, which is printable or sealable (Column 1, lines 4-8). The core layer comprises a thermoplastic and has a first side and a second side, the functional layer is on the first side of the core layer and the block resistant layer is on the second side of the core layer (Column 2, lines 1-10). The core layer comprises a propylene homopolymer (***thus meeting the limitations of claim 15***) or a copolymer of propylene and minor amounts of a 2-4 carbon atom olefin, i.e., a propylene-ethylene copolymer or a propylene-butylene copolymer (***thus meeting the limitations of claim 17***) (Column 3, lines 23-30). The block resistant layer comprises a copolymer of ethylene and propylene or a polymer of ethylene, propylene, and butylene (***thus meeting the limitations of claims 22 and 23***) (Column 3, lines 44-50). The functional layer may comprise an ethylene-propylene-butylene polymer (***thus meeting the limitations of claim 24***) (Column 3, lines 51-55). The block resistant layer is

compounded with 0.05 to 10 weight percent of a particular kind of polydialkylsiloxane known as silicone gum (***thus meeting the silicone gum weight percent limitations of independent claim 14***) which has a viscosity of 10 to 20 million cSt (***thus meeting the limitations of claim 18***) (Column 3, lines 66-67 and Column 4, lines 20-25, 52-54 and 67). The properties of the film may be enhanced by adding antiblock additives in an amount ranging from 0.1 to 3 weight % (***thus meeting the antiblocking agent weight percent limitations of independent claim 14***) and examples include spherical particles made from methyl methacrylate resin having an average particle diameter of 1 to 15 microns (***thus meeting the limitations of claims 16 and 25***) (Column 5, lines 32-60). Each layer may, optionally, comprise antistatic additives or antiblock additives (***thus meeting the limitations of claims 19 and 20***) (Column 5, lines 39-42). The multilayer film is typically made by coextruding the core layer together with the block inhibiting layer and the functional layer (Column 6, lines 32-35). Optionally, one or both of the external surfaces maybe flame or corona treated (Column 6, lines 40-45). Examples 1 and 2 show that the functional layer may be treated while the antistatic layer is left untreated (***thus meeting the limitations of claim 21***) and that the core layer may have a thickness of 18.8 microns and the block inhibiting layer and the functional layer may have thickness' of 0.6 microns (***thus meeting the limitations of claim 27***). Example 1 further shows that the core layer is comprised of a propylene polymer and is free of an antistatic agent and a fatty acid amide slip additive (***thus meeting the limitations of claim 28***). The film comprises at least three layers and additional layers may be incorporated (***thus meeting the limitations of claim 29***). The

Examiner takes the position that the block resistant layer disclosed by Cretekos et al. is inherently heat sealable given that the chemical composition of the block resistant layer as disclosed by Cretekos et al. and the heat sealable layer of the claimed invention is identical. Furthermore, with regards to the limitations that the film structure has a force over forming collar value of less than 20 pounds and a hot slip value of less than 20 at 290°C, the Examiner takes the position that such property limitations are inherently met by the multilayer film disclosed by Cretekos et al. given that the multilayer film has the same structure (i.e., the same number of layers and the same order of layers), the same chemical composition (i.e., each corresponding layer has the same chemical composition), and is processed by the same method (i.e., co-extrusion). All limitations of the claimed invention are either inherent or disclosed in the above reference.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 26 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cretekos et al. (US 6,074,762) in view of Park et al. (US 4,632,869).

Cretekos et al., as discussed above in Paragraph No. 3, fail to disclose that the core layer comprises a cavitating agent selected from the group consisting of polybutylene terephthalate, calcium carbonate and blends thereof.

However, Park et al. disclose opaque films having an improved degree of opacity and an enhanced brightness and having at least one skin layer thereon (Column 1, lines 23-32). The opaque film comprises a thermoplastic polymer matrix comprising void-initiating particles of polybutylene terephthalate (Column 1, lines 41-51). The polybutylene terephthalate has good tensile strength, toughness and dimensional stability, low water absorption and low static and dynamic coefficients of friction (Column 2, lines 41-52). The thermoplastic resin matrix of the opaque film may be thermoplastic resin such as polypropylene or polyethylene, polybutylene and copolymers thereof (Column 2, lines 56-68 and Column 3, lines 1-5).

Accordingly, it would have been obvious to one having ordinary skill in the art to add a cavitating agent to the core layer disclosed by Cretekos and to specifically add a polybutylene terephthalate cavitating agent given that Park et al. specifically teach that such films have an improved degree of opacity and an enhanced brightness and that polybutylene terephthalate is a desirable cavitating agent given that it has good tensile strength, toughness and dimensional stability, low water absorption and low static and dynamic coefficients of friction.

6. Claims 30-41, 43, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cretekos et al. (US 6,074,762).

Cretekos et al. disclose a multilayer film having a core layer, a block resistant layer (***corresponding to the heat sealable layer of the claimed invention***) which inhibits blocking to a functional layer of the film, which is printable or sealable (Column

1, lines 4-8). The core comprises a thermoplastic and has a first side and a second side, the functional layer is on the first side of the core layer and the block resistant layer is on the second side of the core layer (Column 2, lines 1-10). The core layer comprises a propylene homopolymer or a copolymer of propylene and minor amounts of a 2-4 carbon atom olefin, i.e., a propylene-ethylene copolymer or a propylene-butylene copolymer (Column 3, lines 23-30). The block resistant layer comprises a copolymer of ethylene and propylene or a polymer of ethylene, propylene, and butylenes (thus meeting the limitations of claims 22 and 23) (Column 3, lines 44-50). The functional layer may comprise an ethylene-propylene-butylene polymer (Column 3, lines 51-55). The block resistant layer is compounded with 0.05 to 10 weight percent of a particular kind of polydialkylsiloxane known as silicone gum which has a viscosity of 10 to 20 million cSt (Column 3, lines 66-67 and Column 4, lines 20-25, 52-54 and 67). The properties of the film may be enhanced by adding antiblock additives in an amount ranging from 0.1 to 3 weight % and examples include spherical particles made from methyl methacrylate resin having an average particle diameter of 1 to 15 microns (Column 5, lines 32-60). Each layer may, optionally, comprise antistatic additives or antiblock additives (Column 5, lines 39-42). The multilayer film is typically made by coextruding the core layer together with the block inhibiting layer and the functional layer (Column 6, lines 32-35). Optionally, one or both of the external surfaces maybe flame or corona treated (Column 6, lines 40-45). Examples 1 and 2 show that the functional layer may be treated while the antiblock layer is left untreated and that the core layer may have a thickness of 18.8 microns and the block inhibiting layer and the

functional layer may have thickness' of 0.6 microns. Example 1 further shows that the core layer is comprised of a propylene polymer and is free of an antistatic agent and a fatty acid amide slip additive. The film comprises at least three layers and additional layers may be incorporated.

Cretekos fails to disclose that the first film structure is laminated to a second film structure wherein the second film comprises the same structure as the first film.

However, Cretekos does teach that the film comprises at least three layers and additional layers may be incorporated and hence it would have been obvious to laminate the film structure to another film structure having the same structure as the fist film structure given that the courts have held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 14-18 and 22-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6, 8, and 9 of U.S. Patent No. 6,472,077 B1 in view of Schuhmann et al. (US 5,851,640).

Claims 1-6, 8, and 9 of U.S. Patent 6,472,077 B1 recite a block resistant film comprising a (1) core layer of a thermoplastic resin selected from the group consisting of propylene homopolymer, butene homopolymer, propylene-ethylene copolymer and propylene-butene copolymer, (2) a functional layer on one side of the core layer and comprising a homopolymer of ethylene or propylene or a copolymer of ethylene, propylene, or butylene and (3) a block resistant layer on the other side of the core layer and comprising a thermoplastic polymer and 1 to 10 wt. of a polydialkylsiloxane, wherein the thermoplastic polymer is selected from homopolymers of ethylene or propylene and copolymers of propylene and an olefin having 2 or 4-8 carbon atoms and wherein the block layer is flame treated or corona treated. Claim 4 recites that the polydialkylsiloxane has a viscosity of above about 10,000,000 centistokes.

Claims 1-6, 8, and 9 of U.S. Patent 6,074,762 fail to recite that the block resistant layer comprises 0.05 to about 0.5 weight percent of a particulate antiblocking agent having an average particle size of from about 1 to about 5 microns.

However, Schuhmann et al. disclose a sealable, multilayer polypropylene film having a printable surface and comprising a core layer and top layers on either side of the core layer (Column 1, lines 9-14). The multilayer film has outstanding gloss and good sealing properties (Column 2, lines 5-6). The top layers may comprises 0.1 to 2-

weight % of silicon dioxide having an average particle diameter of 1 to 6 microns as an antiblocking agent (Column 8, lines 62-68 and Column 9, lines 1-4).

Accordingly, it would have been obvious to one having ordinary skill in the art to add 0.1 to 2-weight % of silicon dioxide having an average particle diameter of 1 to 6 microns as an antiblocking agent to the block resistant layer recited in claims 1-6, 8, and 11 of U.S. Patent 6,074,762 given that Schuhmann et al. specifically state that doing so improves the antiblocking properties of the outer layers while maintaining outstanding gloss and sealing properties.

### ***Response to Arguments***

8. Applicant's arguments filed on December 12, 2002 (Paper No. 6) have been fully considered but they are not persuasive. Applicants traverse the rejection under 35 U.S.C. 102(e) as being anticipated by Cretekos et al. (US 6,074,762) and submit that Cretekos fails to disclose the specifically recited claimed force over forming collar and hot slip properties et forth in the new claims. However, such an argument is not persuasive given that the Examiner takes the position that such property limitations are inherently met by the multilayer film disclosed by Cretekos et al. given that the multilayer film has the same structure (i.e., the number of layers and the order of layers), the same chemical composition (i.e., each corresponding layer has the same chemical composition), and is processed by the same method (i.e., co-extrusion).

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (703)305-0594. The examiner can normally be reached on Mondays and Thursdays from 8am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on (703)308-2367. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-5408 for regular communications and (703)305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-5665.

*Sheeba Ahmed*  
Sheeba Ahmed  
March 9, 2003